

E-FILED ON 08/26/09

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

USA CAPITAL REALTY ADVISORS, LLC

USA CAPITAL DIVERSIFIED TRUST DEEF
FUND, LLC

USA CAPITAL FIRST TRUST DEED FUND, LLC,

USA SECURITIES, LLC

Debtors

Affects:
USA Commercial Mortgage Company

Case No.: BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

Chapter 11

Jointly Administered Under Case No.
BK-S-06-10725-LBR

Judge Linda B. Riegler

**SUPPLEMENTAL DECLARATION
OF GEOFFREY L. BERMAN IN
SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT
PURSUANT TO RULE 9019 OF THE
FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

Hearing Date: September 3, 2009
Hearing Time: 9:30 a.m.

Geoffrey L. Berman, in his capacity as the Court-appointed Trustee of the USACM
Liquidating Trust, declares under penalty of perjury as follows:

1. I am an adult person competent to testify in court. I make the following statements
based upon my personal knowledge except where otherwise indicated.

1 2. I am the Court-appointed trustee of the USACM Liquidating Trust (the "USACM
2 Trust") pursuant to the order confirming the "Debtors' Third Amended Joint Chapter 11 Plan of
3 Reorganization" (the "Joint Plan") entered on January 8, 2007 in *In re USA Commercial*
4 *Mortgage*, Cause No. BK-S-06-10725 pending in the United States Bankruptcy Court for the
5 District of Nevada (the "Bankruptcy Court"), and submit this declaration in that capacity. The
6 Joint Plan became effective on March 12, 2007 (the "Effective Date").

7
8 3. I submit this supplemental declaration in support of the USACM Trust's Motion
9 for Approval of Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure
10 (the "Motion") and in response to issues raised during the August 21, 2009 hearing on the Motion.
11 As discussed in the Motion, the USACM Trust seeks Bankruptcy Court approval of the Proposed
12 Settlement Agreement¹ between the USACM Trust, Mountain West Mortgage LLC ("MWM"),
13 John M. Keilly ("Keilly") and J.M.K. Investments, Ltd. ("JMK") (collectively, MWM, Keilly, and
14 JMK are referred to as "Defendants"). A copy of the Proposed Settlement Agreement is attached
15 to my original declaration filed in conjunction with the Motion (the "Original Declaration").

16
17 4. In addition to considering the factors discussed in my Original Declaration, I have
18 also considered the impact, if any, on the reasonability of the Proposed Settlement caused by the
19 proof of claim MWM has filed in the USACM chapter 11 case (the "Claim") In the Claim,
20 MWM asserts that it is entitled to a general unsecured claim in the amount of \$2,048,000.00 for
21 amounts that were allegedly due from USACM as an exit fee for a loan transaction referred to as
22 the "Lerin Hills" loan.

23
24 5. On March 13, 2007, the USACM Trust filed the Objection of the USACM
25 Liquidating Trust To Proof Of Claim Filed By Mountain West Mortgage Co./Lerin Hills (Claim
26

¹ Unless otherwise defined herein, capitalized terms are used as defined in the Motion.

1 No. 203) [Docket No. 3078] (the "Claim Objection"). The Court has set trial on the Claim
2 Objection to occur on October 22, 2009 (the "Trial"). As discussed in the Claim Objection, the
3 Trust objected to the Claim because it is based upon an alleged oral agreement that is restated in
4 an affidavit from Joseph Milanowski attached to the Claim. Except for Mr. Milanowski's
5 potential testimony, I am not aware of any evidence MWM has to support its assertions of an oral
6 agreement with USACM for the alleged exit fee. Moreover, *the Lerin Hills loan was never repaid*
7 so that even if there were such an oral agreement, no exit fee is due.. For that reason, I have been
8 unwilling to give MWM any meaningful allowed claim.
9

10 6. Further, during the settlement conference which I attended on behalf of the Trust
11 with the Defendants, both I and my counsel attempted to include the Claim as part of the
12 settlement negotiations. Thomas Jurbala (MWM's principal) did not attend the settlement
13 conference despite being order to appear, and his counsel stated that he did not have authority to
14 negotiate resolution of the Claim as part of a global settlement.² Therefore, I and my counsel
15 pursued and ultimately reached a settlement solely of this adversary proceeding, exclusive of and
16 knowingly without also resolving the MWM proof of claim. It is that Proposed Settlement that is
17 addressed in the Motion.
18

19 7. As discussed in my Original Declaration, I believe the Proposed Settlement
20 represents a reasonable compromise of the Pending Litigation because it will result in a
21 substantial recovery for the beneficiaries of the USACM Trust without the expense, time, and
22 risks of further litigation, trial, and efforts to collect on any judgment the USACM Trust may
23 ultimately obtain. In my judgment, those benefits are worth pursuing even though the Claim will
24
25

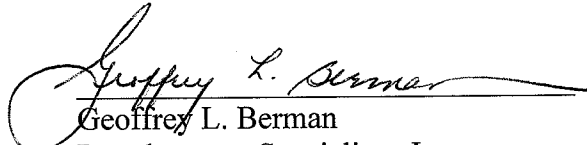
26 ² As the Court may recall, Mr. Jurbala was sanctioned for his failure to appear at the settlement conference.

1 not be resolved. This is especially true because, as discussed above and in the Claim Objection, I
2 believe the Claim is without merit.

3 7. For all of these reasons, as well as the reasons discussed in my Original
4 Declaration, I continue to believe that the Proposed Settlement falls within the reasonable range of
5 likely outcomes of the Pending Litigation, after accounting for litigation risks, costs, and delay
6 associated with trial, appeal and ultimately, if successful, collection of any judgment awarded.
7

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed August 26, 2009 at Los Angeles, California.

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